

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
PAUL OLSEN,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)
_____)

PCHB No. 78-58

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Appellant appeals from the Department of Ecology denial of his application for a permit to withdraw ground water. The matter came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, on September 29, 1978 in Ellensburg, Washington. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant Paul Olsen appeared pro se. Respondent Department of Ecology appeared by and through its attorney, Robert E. Mack, Assistant Attorney General. Yakima reporter Susan Oynes recorded the proceedings.

WAH/DO

1 Witnesses were sworn and testified. Exhibits were examined.
2 Having heard the testimony and examined the exhibits, and being fully
3 advised, the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant, Paul Olsen, owns farm land near Buena in Yakima
7 County (in Section 16, T. 11 N., R. 20 E.W.M.; see Exhibit R-3).
8 The Sunnyside Valley Irrigation District (SVID) diverts water from the
9 Yakima River into an irrigation canal which runs along the northeast
10 boundary of this property. Highway 12 forms the southwest boundary of
11 the farm, about 3/4 mile north from the Yakima River.

12 Mr. Olsen now irrigates his farm exclusively with water from the
13 SVID canal. In February, 1977, he applied to respondent (DOE)
14 for a permit to withdraw ground water as a supplementary source for
15 irrigation, and to permit development of additional orchards. The
16 proposed point of withdrawal was within a low-lying portion of the
17 farm, adjacent to the highway.

18 II

19 Mr. Olsen's application was accepted by DOE for processing and, in
20 April, 1977, a DOE employee conducted a field examination of the
21 proposed site. Both the application and field examination should
22 have put DOE on notice that the well being sought would be very
23 shallow, would be in close proximity to the Yakima River and would
24 possibly be in direct hydraulic continuity with the river. DOE should
25 have notified Mr. Olsen that, by a general (unwritten) policy developed
26 in the 1940s, the DOE will deny any application for such shallow wells

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existing withdrawals from the Yakima River if conditioned to halt at the beginning of the irrigation season.

Also, ground water for irrigation which is not in continuity with the Yakima River may or may not exist at a much greater depth below the present well site or elsewhere on the Olsen farm.

A new application would be necessary to probe these possibilities.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The DOE properly denied this application for irrigation use of ground water that is in hydraulic continuity with the Yakima River. Existing withdrawals from the Yakima River are such that DOE must give full consideration to preserving the remaining flow for wildlife, fish, scenic, aesthetic and other environmental values before committing this remaining flow to irrigation. RCW 90.54.020(3)(a). Furthermore, the extent of this remaining flow may be substantially altered by proceedings recently commenced in state and federal court for the purpose of adjudicating all rights of withdrawal on the Yakima River.

A new right to withdraw ground water in continuity with the river would therefore result in an unlawful impairment of the rights of those who are presently entitled to withdraw from the river. RCW 90.03.290 as adopted by RCW 90.44.060. See also RCW 90.44.030.

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II

Any Finding of Fact which should be deemed a Conclusios of Law is hereby adopted as such.

From these Conclusions the Board enters this

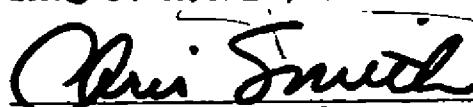
ORDER

The Department of Ecology's denial of appellant's application for a permit to withdraw ground water (No. G4-24721) is hereby affirred.

DONE at Lacey, Washington this 10th day of October, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member

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